



05-22-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #76

Docket No. 57408.00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EXHIBIT
THERMOFLUID TECHNOLOGIES, INC.
a Tennessee Corporation

Petitioner,

vs.

TALON LUBRICANTS, INC.
a Delaware Corporation

Registrant-Respondent.

PETITION FOR CANCELLATION

Cancellation No.

Reg. No. 2,154,153

Date of Issue: April 28, 1998

BOX TTAB FEE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Sir:

Enclosed herewith is a Petition for Cancellation of Registration No. 2,154,153 trademark registered on the Principal Register, together with a duplicate thereof in accordance with 37 C.F.R. § 2.112(a). Also enclosed is a check in the amount of Three Hundred Dollars (\$300) in payment of the filing fee for this Petition.

Should the proper payment not be enclosed, if the check is improper or missing, please charge the unpaid amount or credit the overage to our Deposit Account No. 12-2355. Two photocopies of this request are also enclosed.

Respectfully submitted,

LUEDEKA, NEELY & GRAHAM, P.C.

By:

Michael E. Sellers

Michael E. Sellers

Registration No. 39,831

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RECEIVED TTM AND
ATTORNEY GENERAL

MA

May 22, 2002
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Knoxville, TN 37901
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"Express Mail" Mailing Label No. EL 872 411 841 US

Date of Deposit: May 22, 2002



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Registration No. 39,831

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of United States)	
Trademark Registration No. 2,154,153)	
)	
THERMOFLUID TECHNOLOGIES, INC.,)		
Petitioner)	
)	
v.)	Cancellation No. _____
)	
TALON LUBRICANTS, INC., Registrant.)	

PETITION FOR CANCELLATION

Your Petitioner, Thermofluid Technologies, Inc. (hereinafter "Thermofluid"), believes that it is or will be damaged by continued registration of the mark RED TACK 2000 of United States Registration No. 2,154,153 issued April 28, 1998, and hereby petitions to cancel said registration on the following grounds.

1. The Petitioner, Thermofluid, is a corporation organized under the laws of the State of Tennessee, with a business address of 2413 East Broadway 141, Maryville, Tennessee, 37804.

2. Thermofluid or a predecessor in interest has since at least as early as May 31, 1990 continuously used in the United States and is now using in the United States the mark RED TEK for a variety of products including lubricating greases and lubricating oil for automotive, heavy truck, and industrial use.

3. Thermofluid or a predecessor in interest has established and now owns valuable goodwill in the mark RED TEK, and this mark has become so associated with the source of goods sold by or under license from Brewer that any mark including the terms "red tek", or

confusingly similar variations thereof, as applied to lubricating greases and oils marketed in commerce in the United States would be likely to confuse others as to the source of the goods or any services related thereto.

4. Thermofluid filed a United States trademark application on May 1, 2002 under Serial No. 76/402,033, wherein registration is sought in International Class 4 for the mark RED TEK for lubricating greases and lubricating oil for automotive, heavy truck, and industrial use. A copy of this application is attached hereto as Exhibit A.

5. On April 3, 1996, Talon Lubricants, Inc. filed an application under Serial No. 75/083,019 seeking registration of the mark RED TACK 2000 in International Class 4 for grease for motor vehicle lubrication and for general purpose use which application matured into U.S. Registration No. 2,154,153 on April 28, 1998. The particulars of said registration are attached hereto as Exhibit B.

6. On information and belief, registrant Talon Lubricants, Inc. was a corporation organized under the laws of the State of Delaware, with its principal place of business at RR 2, Box 78, Dingmans Ferry, Pennsylvania 18328.

7. On information and belief, registrant Talon Lubricants, Inc. is no longer an existing corporation as its corporate status was voided in 1999 by the Delaware Secretary of State for failure to pay taxes.

8. On information and belief, the mark RED TACK 2000 of United States Registration No. 2,154,153 is no longer in use and has been abandoned.

9. On information and belief, Thermofluid's right to use in the United States and to federally register the mark RED TEK for lubricating greases and lubricating oil for automotive, heavy truck, and industrial use is superior to that of Talon Lubricants, Inc. (or any purported predecessor in interest) by virtue of the prior continuous use thereof by Thermofluid or a predecessor in interest in commerce in the United States from a date long prior to any date from which Talon


Lubricants, Inc. or a predecessor in interest has made continuous use thereof in commerce or with the United States.

10. On information and belief, the mark RED TACK 2000, as shown in U.S. Registration No. 2,154,153, so resembles Thermofluid's mark RED TEK as to be likely, when applied to the goods identified in said Registration, to cause confusion, or to cause mistake or to deceive.

WHEREFORE, Thermofluid respectfully submits that it is or will be damaged by continued registration of the mark RED TACK 2000 of the said Registration No. 2,154,153, and requests that this Petition For Cancellation be sustained in its favor and that United States Registration No. 2,154,153 be canceled.

Respectfully submitted,

LUEDEKA, NEELY & GRAHAM, P.C.


By: 
Michael E. Sellers
Registration No. 39,831

May 22, 2002
P.O. Box 1871
Knoxville, Tennessee 37901
865-546-4305

FIRST CLASS CERTIFICATE OF MAILING

I hereby certify that the foregoing Petition For Cancellation is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Box TTAB FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on this date.

5-22-2002
Date


Michael E. Sellers
Registration No. 39,831

MES:cmw
Enclosures
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